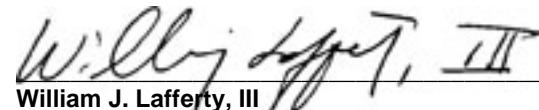


June 14, 2018

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA1
2
3 The following constitutes the order of the court.
4 Signed June 13, 20185
6 
7 William J. Lafferty, III
U.S. Bankruptcy Judge8
9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**12 In re) Case No. 17-42150
13 Leroy Fonteno,) Chapter 13
14) Debtor.) Adv. Pro. No. 18-04066
15 Jeanette Childs and Leroy Fonteno,)
16) Plaintiffs.)
17 v.)
18 Wells Fargo Bank, et al,)
19) Defendants.)
20 _____)21 **MEMORANDUM REGARDING VOLUNTARY DISMISSAL**22 On June 13, 2018, the Court held a hearing on multiple motions to dismiss filed by
23 Defendants in this case. Prior to the hearing, on June 7, Plaintiff filed a *Notice of Voluntary*
24 *Dismissal* ("the Notice") (doc. 18). Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP")
25 7041(a)(1)(A)(i), the Notice is sufficient to dismiss this adversary proceeding because no answer
or motion for summary judgment has been filed. However, the Court writes this memorandum to
clear up a point of possible confusion.26 In the Notice, Plaintiff included the following language. "Accordingly, Plaintiff seeks
27 dismissal of the entire adversary complaint *without prejudice* and without court order" (emphasis
28 added). Whether the dismissal is with or without prejudice is an operation of law. FRBP

7041(a)(1)(B) states “if the Plaintiff previously dismissed any federal-or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Therefore, the effect of the Notice is to dismiss this case, with or without prejudice as the facts may determine. However, it is not for this Court to say what the effect of the Notice will be on a future action, and as this dismissal is without a Court order, there is no vehicle to make such a determination even if the Court were inclined to do so. The Notice dismissed the case. Should Plaintiff file the same claims in the future, a future competent court may be asked to determine the preclusive effect of the Notice on the case before it.

END OF MEMORANDUM

1 **Court Service List**
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